

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sects. 6-7.*)

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

- I.—Courts of Session :
- II.—Presidency Magistrates :
- III.—Magistrates of the first class :
- IV.—Magistrates of the second class :
- V.—Magistrates of the third class.

B.—Territorial Divisions.

7. (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

(2) The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such divisions and districts.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

(4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

8. (1) The

(Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sects. 8-10.)

Power to divide districts into subdivisions.

8. (1) The Local Government may divide any district outside the presidency-towns into subdivisions, or make any portion of any such district a subdivision, and may alter the limits of any subdivision.

Existing subdivisions maintained.

(2) All existing subdivisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

C.—Courts and Offices outside the Presidency-towns.

Court of Session.

9. (1) The Local Government shall establish a Court of Session for every sessions division, and appoint a Judge of such Court.

(2) The Local Government may, by general or special order in the official Gazette, direct at what place or places the Court of Session shall hold its sitting ; but, until such order be made, the Courts of Session shall hold their sittings as heretofore.

(3) The Local Government may also appoint Additional Sessions Judges, and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(4) A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.

(5) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

District Magistrate.

10. (1) In every district outside the presidency-towns the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sects. 11-13.*)

(2) The Local Government may appoint any Magistrate of the first class to be an Additional District Magistrate for a period not exceeding six months, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code as the Local Government may direct.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

12. (1) The Local Government may appoint as Subordinate Magistrates. many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns ; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

13. (1) The Local Government may place any Magistrate of the first or second class in charge of a subdivision, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Subdivisional Magistrates.

(3) The Local Government may delegate its powers under this section to the District Magistrate.

14. (1) The Magistrate.

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Secs. 14-15.*)

Special
Magistrates.

14. (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the presidency-towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the Local Government may by general or special order direct.

(3) With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Benches
of Magis-
trates.

15. (1) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

(2) Except

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Secs. 16-17.*)

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members, who is present taking part in the proceedings as a member of the Bench, belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

- (a) the classes of cases to be tried;
- (b) the times and places of sitting;
- (c) the constitution of the Bench for conducting trials;
- (d) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules or give special orders consistent with this Code as to the distribution of business among such Magistrates and Benches; and

(2) Every Magistrate (other than a Subdivisional Magistrate) and every Bench exercising powers in a subdivision shall also be subordinate to the Subdivisional Magistrate, subject, however, to the general control of the District Magistrate.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise

Powers exercisable by Bench in absence of special direction.

Power to frame rules for guidance of Benches.

Subordination of Magistrates and Benches to District Magistrate;

to Subdivisional Magistrate.

Subordination of Assistant Sessions Judges.

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sects. 18-19.*)

Judges to
Sessions
Judge.

exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) The Sessions Judge may also, when he himself is unavoidably absent or incapable of acting, make provision for the disposal of any urgent application by an Additional or Assistant Sessions Judge or, if there be no Additional or Assistant Judge, by the District Magistrate, and such Judge or Magistrate shall have jurisdiction to deal with any such application.

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates. 18. (1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried Presidency Magistrate, or by any other Presidency Magistrate empowered by the Local Government to sit singly, or by any Bench of Presidency Magistrates.

Benches. 19. Any two or more of such persons may (subject to the rules made by the Chief Presidency Magistrate under the power hereinafter conferred) sit together as a Bench.

20. Every

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sects. 20-21.*)

. 20. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

21. (1) Every Chief Presidency Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Presidency Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;
- (b) the times and places at which Benches of Magistrates shall sit;
- (c) the constitution of such Benches;
- (d) the mode of settling differences of opinion which may arise between Magistrates in session; and
- (e) any other matter which could be dealt with by a District Magistrate under his general powers of control over the Magistrates subordinate to him.

(2) The Local Government may, for the purposes of this Code, declare what Presidency Magistrates are subordinate to the Chief Presidency Magistrate, and may define the extent of their subordination.

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Secs. 22-25.*)

E.—Justices of the Peace.

Justices of
the Peace for
the Mufassal.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of
the Peace for
the presi-
dency-towns.

23. The Local Government, so far as regards the towns of Calcutta, Madras and Bombay, may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom the Local Government thinks fit.

Present Jus-
tices of the
Peace.

24. (1) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

(2) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Govern-
ment.

Ex officio
Justices of
the Peace.

25. In virtue of their respective offices, the Governor General, Governors, Lieutenant-Governors and Chief Commissioners, the Ordinary Members of the Council of the Governor General, the Judges of the

High

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter II.—Of the Constitution of Criminal Courts and Offices.—Secs. 26-27. Chapter III.—Powers of Courts. Sec. 28.*)

High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

28. Subject to the other provisions of this Code, Offences XLV of 1860. any offence under the Indian Penal Code may be tried—

(a) by the High Court, or

(b) by

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter III.—Powers of Courts.—Secs. 29-31.*)

- (b) by the Court of Session, or
- (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

Offences under other laws.

29. (1) Subject to the provisions of section 447, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High-Court or by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governors of the Punjab and Burma and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam, in Sind, and in those parts of the other provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate or any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. (1) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but

any

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter III.—Powers of Courts.—Sec. 32.*)

any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years.

32. (1) The Courts of Magistrates may pass the following sentences, namely :—

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|---|---|
| <p>(a) Courts of Presidency Magistrates and of Magistrates of the first class :</p> | <p>Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law ; Fine not exceeding one thousand rupees ; Whipping.</p> |
| <p>(b) Courts of Magistrates of the second class :</p> | <p>Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law ; Fine not exceeding two hundred rupees ; Whipping (if specially empowered).</p> |
| <p>(c) Courts of Magistrates of the third class :</p> | <p>Imprisonment for a term not exceeding one month ; Fine not exceeding fifty rupees.</p> |

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

(3) No Court of any Magistrate of the second class

Sentences
which Magis-
trates may
pass.

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class shall pass a sentence of whipping unless it is specially empowered in this behalf by the Local Government.

Power of Magistrates to sentence to imprisonment in default of fine.

33. (1) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law in case of such default:

Provided that—

(a) the term is not in excess of the Magistrate's powers under this Code;

(b) in any case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence, the period of imprisonment awarded in default of payment of the fine shall not exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a Magistrate, specially empowered under section 30, may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years.

Sentence in cases of conviction of several offences at one trial.

35. (1) When a person is convicted at one trial of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter III.—Powers of Courts.—Sects. 36-37.*)

(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:—

- (a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years: Maximum term of punishment.
- (b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Explanation.—Separable offences which come within the provisions of section 71 of the Indian Penal Code are not distinct offences within the meaning of this section.

Illustration.

A breaks into a house with intent to commit theft and steals property therein. A has not committed distinct offences.

C.—Ordinary and additional Powers.

36. All District Magistrates, Subdivisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

37. In addition to his ordinary powers, any Subdivisional Magistrate or any Magistrate of the first, second

Additional powers conferrable on Magistrates.

(*Part II.—Constitution and Powers of Criminal Courts and Offices. Chapter III.—Powers of Courts.—Secs. 38-41.*)

second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of
District
Magistrate's
investing
power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of Powers.

Mode of
conferring
powers.

39. (1) In conferring powers under this Code the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Continuance
of powers of
officers
transferred.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature, within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Powers may
be cancelled.

41. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

PART III.

(*Part III.—General Provisions. Chapter IV.—Of Aid and Information to the Magistrates, the Police and Persons making Arrests.—Secs. 42-44.*)

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—

- (a) in the taking or preventing the escape of any other person whom such Magistrate or police-officer is authorised to arrest;
- (b) in the prevention or suppression of a breach of the peace, or in the prevention of any injury attempted to be committed to any railway, canal, telegraph or public property.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

44. (1) Every person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following

sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest